UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/49/543
19 October 1994

ORIGINAL: ENGLISH

Forty-ninth session
Agenda item 100 (c)

HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Situation of human rights in South Africa

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the preliminary report on the situation of human rights in South Africa prepared by the Ad Hoc Working Group of Experts on southern Africa of the Commission on Human Rights in accordance with Commission resolutions 1993/9 of 26 February 1993 and 1994/10 of 18 February 1994 and Economic and Social Council decision 1993/257 of 28 July 1993.

ANNEX

Preliminary report on the situation of human rights in South Africa prepared by the Ad Hoc Working Group of Experts on southern Africa of the Commission on Human Rights in accordance with Commission resolutions 1993/9 of 26 February 1993 and 1994/10 of 18 February 1994 and Economic and Social Council decision 1993/257 of 28 July 1993

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I. INTRODUCTION

1. The Commission on Human Rights, at its forty-ninth session, adopted resolution 1993/9 of 26 February 1993, in which it decided to renew for a further period of two years the mandate of the Ad Hoc Working Group of Experts on southern Africa, established pursuant to Commission on Human Rights resolution 2 (XXIII) of 6 March 1967. In resolution 1994/10 of 18 February 1994, the Commission requested the Working Group, inter alia, to continue to examine the situation regarding the violations of human rights in South Africa and to submit a final report to the Commission at its fifty-first session and a preliminary report to the General Assembly at its forty-ninth session.

2. The Working Group is currently composed of the following six members, serving in their personal capacity and appointed by the Commission on Human Rights: Mr. Mikuin Leliel Balanda (Zaire), Chairman/Rapporteur; Mr. Felix Ermacora (Austria), Vice-Chairman; Mr. Armando Entralgo (Cuba); Mr. Elly-Elikunda Mtango (United Republic of Tanzania); Mr. Zoran Pajic (Bosnia and Herzegovina); and Mr. Mulka Govinda Reddy (India).

3. Following informal contacts between the representatives of the Permanent Mission of South Africa and the Chairman on behalf of the Working Group to visit South Africa, an invitation was received from that Government on 11 February 1994 and was circulated to the participants in the fiftieth session of the Commission on Human Rights (E/CN.4/1994/118). The Commission, in resolution 1994/10, welcomed the invitation of the Government of South Africa to the Ad Hoc Working Group of Experts on southern Africa. The Working Group expresses its satisfaction with the long-awaited invitation.

4. In pursuance of the invitation, the Working Group conducted a mission to South Africa during the period 10-26 August 1994. In the course of the mission, visits were made to Pretoria, Johannesburg, Soweto, Durban, Pietermaritzburg, Kwamashu, Inanda, Phoenix and Cape Town.

5. The Group conducted hearings in Johannesburg from 10 to 16 August 1994, in Durban from 17 to 21 August 1994 and in Cape Town from 22 to 26 August 1994, for the purposes of receiving evidence and hearing testimony from individuals and organizations having first-hand experience with the situation in South Africa in respect of human rights.

6. The Working Group took note of the changes which have occurred in the country after elections based on universal suffrage which took place in April 1994.

7. The topics on which the Group received evidence and heard testimony were the following: right to life; detention, including conditions of detention; deaths in detention and in police custody; capital punishment and executions; treatment of children and adolescents; right to education; right to health; right to work; situation of black workers; trade union activities. The Working Group was particularly interested in issues connected with the security forces, treatment of suspects in police custody and those in prison, political

prisoners, new approaches to educational institutions and health facilities, and the situation regarding the ownership of land and the rights of those who were forcibly removed from their land.

8. During the meetings held in Johannesburg, the Group heard representatives of various non-governmental organizations and, in particular, South African Prisoners Organization for Human Rights; Catholic Institute of Education; Human Rights Committee of South Africa; South African Council of Churches; Panel of Religious Leaders for Electoral Justice; Black Lawyers Association; Lawyers for Human Rights; National Land Committee; Centre for the Study of Violence and Reconciliation; Southern African Catholic Bishops Conference; Independent Board of Inquiry into Informal Repression; Education Policy Unit; National Education Coordinating Committee, National Housing Forum; South African National Congress Organization and a representative of Archbishop Desmond Tutu. The Working Group was also invited to a workshop on "Constitutional litigation - breaking with the past", addressed by the Minister of Justice and organized by the Black Lawyers Association of South Africa.

9. While in Johannesburg, visits to Zonderwater prison and Adriaan Vlok police station were organized by the South African authorities.

10. In Durban, representatives of the Institute for Multi-Party Democracy and Violence Monitor Natal testified before the Working Group. Members of the Faculty of the University of Durban-Westville also made representations to the Group. The Working Group also received testimony from the representatives of the Police and Prison Officers Civil Rights Union (POPCRU), in Pietermaritzburg.

11. Visits to police stations organized by the South African authorities, including those to Durban North Police Station and Inanda (Kwazulu/Natal), were of particular interest to the Working Group and allowed it to have consultations with high-level officials, including those on duty at the provincial level.

12. In Cape Town, the Working Group had consultations with the Deputy Foreign Minister, the Minister of Justice, the Minister of Defence, the Minister of Safety and Security, the Minister of Correctional Services and the Deputy Minister of Education. In addition, consultations with high officials of the Ministry of Health were organized to exchange views and receive information regarding government policies. The Working Group also held meetings with several Judges of the Supreme Court and followed part of the proceedings in a murder trial. A visit was also organized to the University of Cape Town, where the Group had a meeting with the Dean of the Faculty of Law.

13. Visits to prisons organized by the South African authorities included Pollsmoor and Victor Vester.

14. The Working Group received information in the field of labour laws at Geneva from a representative of the Permanent Mission of South Africa, on behalf of the Government of South Africa, on 5 October 1994.

15. Apart from the official meetings, the Working Group heard a total of 43 witnesses.

16. The present report, which should be read in conjunction with the Working Group's latest report to the Commission on Human Rights (E/CN.4/1994/15), is a very brief evaluation of the principal developments in the field of human rights between February 1994 and September 1994, and especially since the April 1994 elections. It was adopted by the Working Group on 5 October 1994.

II. SITUATION OF HUMAN RIGHTS IN GENERAL

17. Since the non-racial multi-party democratic elections took place in April 1994, significant political changes have taken place in South Africa. The changes have created a situation which leads the people to look forward with great expectations to the future. However, it would appear that so far as the right to life is concerned, lack of respect for life, in the form of violent killings, continues and the crime rate has risen. On the other hand, according to information received, politically motivated killings seem to have almost ceased. However, deaths in police custody and detention appear to continue. Recent reports by the Goldstone Commission appear to have gone some way in identifying the culprits connected with politically motivated killings and thus give a basis for investigations leading to eventual prosecutions.

18. The question of the abolition of the death penalty remains unresolved. However, it would appear that there is a majority view in favour of its abolition, although some still favour it. According to the latest figures received, there are 507 persons on death row in South Africa.

III. THE FIRST FREE ELECTIONS

19. In January 1994, the Pan Africanist Congress announced its decision to suspend armed struggle and to participate in elections. In February 1994, further amendments to the Interim Constitution were adopted which included a two-ballot system permitting the possibility of voting for candidates at the provincial and national levels.

20. In the so-called "homeland" of Bophutatswana, in March 1994, a wave of unrest and strikes arising out of restrictions to free political activity and fears of civil servants that their pension rights and salaries would not be protected by the administration led to violent clashes. Intervention by the Afrikanerweerstandsbeweging (AWB) with the intention of upholding the administration of Bophutatswana worsened the situation, leading to further violence and deaths. As a result of the continued strikes and protests and the African National Congress call to the Transitional Executive Council to intervene, the South African Cabinet ordered South African Defence Force (SADF) troops into Bophutatswana. The Transitional Executive Council decided to install an interim administration after the collapse of the "homeland" administration, and on 14 March 1994 two administrators were appointed.

21. In the so-called "homeland" of Ciskei, civil servants demonstrated and protested to register their dissatisfaction regarding the payment of their pensions. Unrest and violence resulting in deaths caused further deterioration in the situation and finally, on 22 March 1994, the Ciskei military leader,

Brigadier Oupa Gquozo, resigned. SADF troops were immediately deployed in Ciskei, and this was followed by the appointment of two joint administrators.

22. In view of the fact that Trankei and Venda had previously expressed their desire to participate in the elections and be reintegrated into the Republic of South Africa, the developments in Bophutatswana and Ciskei cleared the way to proceed with elections. At this juncture, the main obstacle was in respect of the non-participation of certain right-wing political parties, the Inkatha Freedom Party and the Conservative Party. After protracted negotiations and many concessions given by the previous government and Mr. Nelson Mandela to the Inkatha Freedom Party a week before the scheduled elections, they announced their intention to participate in the elections. After the necessary amendments to the Interim Constitution and the ballot papers, the stage was set for the elections to proceed. The foresight, generosity and statesmanship of Mr. Mandela were a crucial element in the realization of this long-awaited event.

23. During the last week of April 1994, the first non-racial multi-party elections based on universal suffrage took place in South Africa. Apart from isolated incidents of violence, the vast majority of the people of South Africa participated in the elections in the most orderly and patient manner. The elections were considered to be free and fair.

24. Twenty-three political parties contested the elections and four abstained (see appendix).

25. Voter education was a key component in the organization of South Africa's first election by universal suffrage. The United Nations Observer Mission in South Africa (UNOMSA) was required to verify that the voter education efforts of the electoral authorities and other interested parties were sufficient and would result in voters being adequately informed about both the meaning of the vote and its procedural aspects.

26. Of the numerous parties contesting the elections, only seven won seats in the 400-member National Assembly, distributed as follows in terms of the percentage poll each party received:

African National Congress	252
National Party	82
Inkatha Freedom Party	43
Freedom Front	9
Democratic Party	7
Pan Africanist Congress	5
African Christian Democratic Party	2

Conduct of polling

27. On 26 April, the day reserved for special voting, observers visited and reported upon a total of 2,960 special voting points. Also on 26 April, United Nations observers monitored voting at 119 foreign voting stations in 57 countries.

28. On 27 and 28 April, observers in South Africa visited 7,340 of the 8,478 voting stations.

29. On the evening of 28 April, polling was extended to 29 April in Transkei, Ciskei, Venda, Lebowa, Gazankulu and Kwazulu. A total of 180 observer teams were deployed to observe the extended polling in these areas.

30. After the end of voting, on 30 April, the Secretary-General's Special Representative in South Africa and the heads of the observer missions of the Commonwealth, the European Union and the Organization of African Unity (OAU) issued the following statement:

> With the end of voting in these historic national and provincial elections in South Africa, in which all South Africans could vote for the first time, we the heads of Mission of the United Nations, Organization of African Unity, Commonwealth, and European Union election observer groups have jointly agreed on an interim assessment of the process up until the end of voting and before counting is completed. Our assessment is based on the work of more than 2,500 election observers deployed throughout the country, under the coordination of the United Nations.
>
> The people of South Africa clearly demonstrated their commitment to the end of apartheid and the transformation to non-racial democracy by turning out in enormous numbers to vote.

IV. ADMINISTRATION OF JUSTICE

31. During discussions with the Minister of Justice, the Working Group was informed of policies and approaches that were to be adopted so far as legal institutions were concerned. The Minister stressed the fact that the present Government was a result of a negotiated settlement in the spirit of reconciliation and that there was neither a revolutionary victory nor a revolutionary defeat. The Constitution of the country dealt extensively with all aspects of human rights and the mechanisms set up under the Constitution and the fact that all parties were committed to the Constitution precluded the creation of arbitrary standards. The Minister referred to the Bill of Rights, the Judiciary, the Commission on Human Rights, the Commission on Gender Equality, the Public Protector, and the Commission on Restitution of Land Rights, as well as other procedures. He also stated that his Government would count on a strong civil society.

32. Referring to the question of amnesty, he informed the Working Group that the previous government had passed two laws, one in 1990 and another in 1992, to cover what were regarded as political offences committed up to 8 October 1990.

Many people had been identified under those procedures. In order to deal with those who had not yet been released, an advisory committee was currently dealing with the cases of approximately 1,000 people, who were not all prisoners, to finalize the matter. The Constitution made provision for amnesty in cases arising out of past conflicts and further promulgation of legislation would be required.

33. The Minister stated that the definition of a political prisoner would be influenced by the Norgaard principles and amnesty would be accorded, in conjunction with the Constitution, to those eligible. However, as a result of country-wide discussion on the whole question, it was now clear that a Truth and Reconciliation Bill would be passed by the end of the year to deal with the matter. The cut-off date for amnesty for political offences was 5 December 1993. The Minister further stated that when the Commission was set up, it would have an even-handed approach and it was envisaged that there would be full disclosure. At that juncture, it was not clear whether disclosure to the Truth and Reconciliation Commission would be in camera or whether it would be made public. The accent was on the victims and their families and some form of reparation to them. The nature of the proceedings would not be judicial, thus leaving the question of prosecutions open, subject to amnesty. The Working Group considered that that process was of great significance in evolving the eventual mechanism and procedures to deal with the victims. Preliminary discussions had taken place with the non-governmental organization sector and also at the international level, with countries which had had to face those problems and created such mechanisms in the recent past.

34. Referring to the needs of the judiciary to correct the non-representative nature of the judicial structures, the Minister of Justice stated that there was need to "de-mystify" the law, and to move cautiously when dealing with those issues as well as the question of training. He expressed, inter alia, concern over the current juvenile justice system as well as the fact that there were too many prisoners awaiting trial.

35. The Working Group noted that the establishment of a Judicial Service Commission went a long way towards creating and maintaining an Independent Judiciary. However, according to information received, appointments in various institutions like the Constitutional Court needed a careful approach in order to avoid perpetuation of the situation under the apartheid system, given the long-standing boycott by the Black, Coloured and Indian lawyers which had resulted in a refusal to accept appointments under the previous government. In that connection, involving the deprived sections of the non-white legal community of South Africa was of great importance. Accelerated training and affirmative action in that particular realm were of crucial importance.

V. SECURITY

36. In view of the historical background in South Africa, as far as the conduct of the South Africa Police and South African Defence Force was concerned, the Working Group was of the opinion that its meeting with the Minister of Safety and Security was of great importance. Referring to an apparent rise in the crime rate, the Minister stated that discussions had already taken place between

the responsible provincial ministers and commissioners of police. It appeared that there were mainly four provinces where violent crimes (including killings of police personnel) took place. The four regions in question were Pretoria and Witwatersrand, Kwazulu/Natal, Western Cape and Eastern Cape. It was further discovered that 80 per cent of the police stations were located outside the problem areas and that those which were located in the flashpoint areas were ill-equipped. Police officers, who investigated up to 60 or 70 cases of serious crimes, were dependent on public transport. A programme had been drawn up aimed at dealing with the lack of resources and other problems facing the ordinary police personnel. In some cases, as a result of an improvement in the relationship between the community and police, persons accused of violent crimes had been apprehended. In conjunction with other relevant ministries, a crime prevention programme was in the process of being developed; it was envisaged that it would also deal with illegal immigrants and organized crime syndicates. The Minister of Safety and Security then referred to the proposed South African Police Services Bill which was being discussed and which it was hoped would become law in the very near future. The Bill had been drafted after a technical committee had been appointed and elaborate consultations had taken place. The participation of the community in police, non-governmental organizations and human rights organizations and others concerned in those consultative forums had been instrumental in the evolution of the Bill. The Minister stressed the necessity of promoting good relations between the police and the community and ensuring community participation in efforts aimed at upholding safety and security.

VI. CONDITION OF PRISONERS

37. The Working Group was given the opportunity to visit three prisons as well as three detention cells in police stations in different parts of the country. In two of the prisons, the Group was able to interview prisoners of their choice, in private. It was observed that conditions in prisons varied considerably. During those visits, it became clear that there was a need to ameliorate prison conditions and detention cells at police stations. Conditions at Vonderwater prison were found by the Working Group to be satisfactory. However, after a visit to Pollsmoor and Victor Vester prisons, the Working Group would like to recommend better access to medical care, provision for a better diet and facilities for physical activities. The Working Group noted that the prison authorities were faced, inter alia, with difficulties arising out of severe overcrowding and budgetary problems.

38. In the course of the discussions with prison authorities as well as with the inmates, it became clear that there was inadequate understanding of the rights and/or privileges of the prisoners vis-à-vis the officials who were in positions of authority, especially in respect of medical care.

39. The Minister of Correctional Services, as well as the prison officials, had stressed some of the difficulties in maintaining discipline in the existing circumstances, faced as they were with overcrowding and understaffing.

40. In this connection, the two incidents which had given rise to violent confrontations (one on 18 March 1994, when the prisoners were demanding the

right to vote, and another on 13 June 1994, when they were demanding clarification in respect of amnesty), had led to the appointment of a Commission of Inquiry to look into prison unrest. The Working Group considered that given the difficulties which arose over the right of prisoners to vote and the lack of a proper understanding of the eligibility for amnesty to prisoners qualifying as political prisoners, there was great need for an in-depth and wide-ranging inquiry which would take into account not only the above-mentioned problems but also the whole question of opportunities and access to education and betterment of prisoners with the possibilities of rehabilitation into society after completion of their prison sentences. The Working Group noted that President Mandela had granted a six-month remission to all prisoners. As a result, 12,000 prisoners had been set free. Furthermore, since the democratically elected Government had come into power, all mothers with minor children (under 12) who had committed non-violent crimes had been released. Those children who had not committed violent crimes and had a place to go to, that is, either to their parents or guardians or places of safety, had also been released. The destructive effect on the family among the non-white population of South Africa under the apartheid system was of particular significance for children who were imprisoned, when looked at in the context of the foregoing.

41. The Working Group noted that there was a widespread mistrust of officers who had served under the oppressive apartheid system. The Group believed that it might be useful to introduce new blood among prison officials at all levels as that would contribute to overcoming distrust and create a better atmosphere. In that regard, the Working Group considered that great care and attention should given to training and recruitment in the future.

42. It may be mentioned here that the Working Group was informed by human rights organizations that according to representations made to them by prisoners, their situation was desperate. Although officially no apartheid existed, when medical care was required white prisoners were allegedly sent to hospitals which were formerly white and black prisoners to those which were formerly black. Furthermore, although there was an amendment to the statutes dealing with prisoners that abolished punitive disciplinary actions, allegations of decrease in the portions of food allocated, solitary confinement, physical assaults on prisoners and delay in access to medical treatment were made against the officers of correctional services. It was further pointed out that lack of proper heating over a period of time could result in diseases like rheumatism, and a generally substandard diet lacking in adequate nutrition could result in deterioration of health. The Working Group was also informed that the fact that the senior personnel were essentially the same as before meant that the implementation of new approaches in administrating the daily life of prisoners would be difficult, as it was alleged that the attitude of the prison officers had not changed. A plea was repeatedly made for prison personnel to be more representative of the South African population.

VII. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

A. Economic and social rights

43. The Working Group noted with interest the brief outline given by the Deputy Foreign Minister, who had stated that human rights and democracy and improvement in the socio-economic conditions were the two important cornerstones of the policy perspectives of his Government and that the proposed Reconstruction and Development Programme would go a long way in the attempts to correct the socio-economic legacies of the past. He informed the Working Group that South Africa had joined the Organization of African Unity, the Commonwealth and the Non-aligned Movement and had resumed its participation in the activities of the United Nations. Proposals to join the Southern African Development Committee were under consideration. He also referred to the possible creation of a Southern Africa Human Rights Commission. The Minister stated that his country was greatly indebted to the international community, without whose involvement in South Africa the process towards democratization would probably have been much more costly and painful. His Government was also particularly conscious of the important role the various international organizations and the continent of Africa played in that respect. It was clear that his country would continue to be subject to the same scrutiny as all other countries concerning human rights violations.

44. Senior officials of the Ministry of Health discussed the whole question of health care in the country with the Working Group. It was pointed out that there were two definite systems in South Africa: the private system, where medical schemes were based on insurance contributions by employers and their employees, to which the higher income groups in the formal sector belonged, and the public sector system. Twenty-three per cent of the population of South Africa belonged to one of the insurance schemes which was in the private sector. The remaining 77 per cent of the population had no insurance and were considered the responsibility of the public sector. The great disparity in funding the two sectors could be seen from the fact that 23 per cent of the population from the private sector consumed 46 per cent of the total health care and 77 per cent of the population in the public sector consumed 54 per cent of the total health care expenditure. Patients paid according to the income they earned, on a sliding scale, and those who were unemployed received free treatment in the hospitals.

45. The Working Group was informed that President Mandela had announced that, as of 1 June 1994, children under 6 years of age and pregnant mothers would be entitled to free medical care. In addition, it had been announced that under a feeding scheme for primary schools, children would receive free meals. Under that scheme, 130,000 schoolchildren were currently receiving free meals on a daily basis. It was envisaged that, from 1 September 1994, the numbers would be increased to 1.9 million and eventually include 3.8 million children, who would receive meals five days a week during the school term, at a total cost of over 1 billion rand. The total primary school population in South Africa was estimated to be 8 million. Therefore, the scheme was to be extended only to areas where the greatest need existed.

46. The Working Group was informed of the need to provide access to hospitals, especially for the underprivileged people of the country. However, it was envisaged that in the course of the next four years 870 clinics would be built first, as in the existing situation primary health care was needed more urgently. The clinics were to be built in the rural areas and in the informal settlement areas. The Working Group was further informed that in the Reconstruction and Development Programme, a great deal of attention had been given to the health care sector. Primary health care, maternal and child health care, family planning and immunization programmes had received special attention. The Working Group was also informed that the focus, to begin with, would be on primary health care, and that initially prevention and health promotion would take precedence over curative health care.

47. The Working Group was informed that since the elections, apartheid was no longer practised in hospitals. However, the geographical location of hospitals might result in a situation where hospitals in an affluent area would be used, for example, by white patients only, as they would be located too far away for the non-white population. Referring to the medical staff, it was further stated that selection procedures had been changed to ensure the training of more non-white doctors, especially from the rural areas. The recent intake of non-white medical students at the University of Cape Town was 66 per cent. The medium of instruction being Afrikaans in three of the medical schools in South Africa, bridging courses were offered to those students who required assistance. All universities now admitted students without taking their race into consideration.

48. The Working Group was informed of the possible introduction of compulsory community service for all who qualified as doctors for a period of two years to serve in rural and squatter areas. It was pointed out that 50 per cent of students who had qualified from the University of Witwatersrand had left the country after three years.

B. Trade union rights and the situation of workers

49. According to information received from a representative of the Permanent Mission of South Africa in Geneva, the situation of the black workers under the previous Government had been administered under 10 homeland departments and one white central Pretoria-based Department of Labour. The 11 departments were responsible for ensuring that labour markets did not function according to normal market criteria but according to racially imposed criteria. This situation remains unchanged. However, the new Government in South Africa is in the process of preparing comprehensive legislation in conformity with the International Labour Organization (ILO) standards to remedy the situation. It will become operative towards the end of this year.

50. It is envisaged that the four statutes in force (the Labour Relation Act, 1956, the Agricultural Labour Act, 1993, the Education Labour Relations Act, 1993 and the Public Sector Labour Relations Act, 1993) will be replaced by a Labour Relations Act, which will reform the previous legislation to include the rights of domestic workers and farm workers.

51. As reported previously by the Working Group, the legal situation of farm workers after the abolition of the Master and Servant law had not changed. Farm workers continued to rely on the farmers, who were their employers, for provision of living and other facilities, as well as education for their children. In view of that dependence, the Working Group was particularly concerned about the laws relating to farm workers in respect of the freedom of association, the right to education, the right to strike and the right to pensions.

52. The Working Group noted that a change in migrant labour policy was envisaged and that land reforms based on a free market policy were also under discussion. Furthermore, the proposed appointment of a Mediation and Arbitration Commission would assist considerably, inter alia, in the elimination of industrial action in the form of a strike as the only action available when a labour dispute arose.

C. Cultural rights

53. In discussions with the Working Group, the Deputy Minister of Education referred to the past inequalities under the apartheid system and stated that under the Constitution every citizen had a right to education. The State therefore had the responsibility to provide education for all citizens, without any discrimination based on race, religion or gender. In the past, only white children had the privilege of compulsory school attendance, and other communities were excluded. The reorganization of the former educational system into a unified system was scheduled to commence with two pieces of legislation. The Education and Employment Acts were due to be tabled before the end of the current session of Parliament. The Working Group was informed that a white paper would soon be available, and by the end of the year it would be tabled in Parliament; it was envisaged that the white paper would set out policy formulated after considering priorities and would create the legal framework and develop a structure for the areas in greatest need. Particular attention was being given to the eradication of institutional structures and schemes which fostered the preservation of apartheid in education. It was envisaged that a policy for the restoration of a culture of teaching and learning would be commemorated and Soweto Day was set aside for that purpose.

54. Under the requirements of the Constitution, only the national government could establish universities and technical institutes, which were State-subsidized. However, the provincial administration was entitled to lay down general policy with regard to curricula and remuneration of teachers. The minimum age for school attendance had not yet been established. The Working Group was informed that 23 per cent of the national budget was being spent on education and that in time to come, it was hoped to build a reservoir of teachers, equal access to educational facilities and community commitment to compulsory education. A review of the university system was planned in order to achieve orderly access through equitable planning.

55. The Working Group was informed that dramatic changes were needed in planning for equality of access in education to meet the constitutional obligation by 1995.

VIII. THE INTERIM CONSTITUTION IN REGARD TO HUMAN RIGHTS

56. The Working Group took note of the following:

As pointed out on several occasions by the Ministers of the Government of National Unity of South Africa, the Constitution of South Africa is a result of a negotiated settlement and therefore represents, in a large measure, the acceptance of compromises by all parties concerned.

57. The Constitution of the Republic of South Africa, which is currently in force, is an Interim Constitution. Under its provisions (S73 (1)), the Constitutional Assembly is enjoined to adopt amendments, if any, within two years from the date of the first sitting of the National Assembly. Provision is made for procedures to be adopted in the absence of the requisite two-thirds majority needed for its adoption.

58. The Constitution expressly abrogates former laws on which the system of apartheid was based and wide-ranging provisions for the protection of human rights and implementing procedures to guarantee them have been made.

59. Fundamental rights, as enumerated under chapter 3, are binding at all levels of government, that is, including the provincial level of government.

60. The Working Group noted with satisfaction that the right to life was guaranteed. However, questions such as the death penalty, abortion and those mentioned under article 5 of the International Covenant on Civil and Political Rights regarding pardons and executions were not dealt with.

61. The right to equal protection and equality before law is far-reaching and is in line with the provisions under the Convention on the Elimination of All Forms of Racial Discrimination.

62. Furthermore, provision is made for freedom and security of the person, which includes the right not to be detained without trial. Torture of any kind, as well as cruel, inhuman or degrading treatment or punishment, is forbidden (S.11).

63. The Constitution forbids servitude and forced labour, and privacy is guaranteed. It includes the right not to be subjected to an arbitrary search of a person, or his or her home or property. It also protects against the violation of private communications and the seizure of private communications. However, no mention is made of data protection.

64. The right to religious belief, freedom of opinion, assembly and movement as well as the right of association are guaranteed under the Constitution. The right to choose a place of residence is expressly provided for (S.S.14 to 19).

65. The right to participate in political activities is guaranteed and the right to vote by secret ballot is provided for (S.S.20, 21).

66. Provisions regarding access to Court in respect of justiciable disputes and access to information held by the State or any of its organs are made in the Constitution (S.S.22 and 23).

67. The general principles regarding administration of justice and detention and arrests of person, which correspond to the relevant international instruments, are clearly indicated (S.S.24 and 25).

68. Some economic and social rights, including the right to an environment which is not detrimental to health, are also included in chapter 3 of the Constitution (S.S.26 to 32).

69. In addition to the general provisions regarding limitations which are in conformity with the international judicial practice, the question of detention under a state of emergency is dealt with extensively (S.S.33 and 34).

70. The Working Group noted with satisfaction that specific provisions were made to uphold the human rights of the citizens of South Africa and that aggrieved parties had recourse to the following:

(a) The Constitutional Court (S.S.97, 98 and 99). The Constitution provides that the President of the Constitutional Court shall be appointed by the President to hold office for a non-renewable period of seven years. In addition, the court will consist of 10 other judges. Their appointment is regulated by detailed procedures as set out (S.99). Their term of appointment consists of a non-renewable period of 10 years.

(b) The Public Protector (S.110). A Public Protector for the Republic of South Africa shall be appointed by the President within 60 days of the first sitting of the Senate after the commencement of the Constitution.

(c) The Human Rights Commission (S.115). The President shall appoint a Human Rights Commission which shall consist of 10 members and a Chairperson within 60 days of the first sitting of the Senate under the Constitution.

(d) The Supreme Court (S.101).

(e) The Commission on Gender Equality (S.119). The Commission on Gender Equality shall consist of a Chairperson and such members as may be determined by an Act of Parliament, in order to promote gender equality and to advise and make recommendations to Parliament or any other legislation with regard to legislation which affects gender equality and the status of women. The aforementioned mechanisms are not yet in place, although nominations to some of them have already commenced.

71. The Working Group noted that the Constitution contained far-reaching provisions which took cognizance of international instruments, in order to safeguard human rights.

72. The memorandum on the objectives of the Constitution of the Republic of South Africa Bill, 1993 states that:

The Plenary of the Multi-Party Negotiating Process has agreed to the contents of the above-mentioned bill, which provides a new Constitution for the Republic of South Africa. The Constitution makes provision for inter alia the following:

(a) A common South African citizenship for all South Africans;

(b) The creation of a sovereign and democratic constitutional State;

(c) Equality between men and women and people of all races;

(d) A justiciable Bill of Fundamental Rights;

(e) A Parliament consisting of a National Assembly and a Senate;

(f) A Government of National Unity;

(g) Nine provinces, each having certain legislative and executive powers;

(h) A Constitutional Assembly to draft and adopt a final Constitution;

(i) An independent and impartial judiciary, which includes a Constitutional Court.

73. The Working Group found the memorandum to be an authentic body of principles and guidelines for the interpretation of the Interim Constitution. They should represent the "bottom line" and starting-point for any future changes in the Constitution.

74. Schedule 4 of the Interim Constitution, while dealing with Constitutional Principles, stresses, inter alia, fundamental rights, national unity, gender and racial equality, equality before law, the separation of powers, multi-party democracy, universal adult suffrage, regular elections, proportional representation and a common roll.

75. Furthermore, reference is made in the Constitution to the acknowledgment, promotion and protection of the diversity of language and culture. The institution, status and role of indigenous law are recognized, protected and applied in courts. It is subject to the fundamental rights contained in the Constitution and to legislation which deals with it specifically. This is in pursuance of the principle of democratic representation at each level of government. In the event of a dispute concerning legislative powers allocated by the Constitution concurrently to the national and the provincial governments which can be resolved by a court, precedence is given to the legislative powers of the national Government. There is, furthermore, an express provision in schedule 4 which states that there shall be an efficient, non-partisan and career-oriented public service and that members of the security forces (policy, military and intelligence) are required to perform their functions and exercise their powers in the national interest and are prohibited from furthering or prejudicing party political interests.

IX. CONCLUDING REMARKS

76. The Working Group has come to the conclusion that after the elections of April 1994, the new political atmosphere and the Interim Constitution represent a positive and viable ground for democratic development of the Republic of South Africa and for the protection of human rights in conformity with the relevant international standards.

77. Political and constitutional changes are followed by a commitment of all decision makers to the idea of compromise and national unity. The importance of compromise and a cautious approach to the shaping of the new legal order and to implementing the new social policy was expressed equally strongly by government representatives, police officers, non-governmental human rights bodies and individuals alike.

78. The Working Group believes that the process of eliminating apartheid in South Africa is irreversible and that the future generations of South Africans are finally given the opportunity to live in a society which is free from racism. However, the legacy of apartheid is still present. The infrastructures and personnel from the previous apartheid system remain intact. In order to change the behaviour of the bureaucracy, a comprehensive educational programme which would also include all segments of society and all walks of life could help substantially in this process. The Working Group wishes to point out that the legacy of apartheid still leaves South Africa's stability and peace vulnerable and that the threat of occasional eruptions of violence is a part of the everyday reality in the South African society. Under these circumstances, the new Government has a challenging task to provide for safeguards and guarantees for human rights, based on the rule of law.

79. Many government officials and representatives of non-governmental organizations expressed appreciation of the important role of the United Nations in its support for the anti-apartheid struggle in the past and valued the work of the Working Group. They expressed the hope that an appropriate form of cooperation and assistance in promoting human rights in South Africa would continue in the new circumstances.

80. The Ad Hoc Working Group of Experts on southern Africa will make recommendations to the Commission on Human Rights at its fifty-first session after prior consultations with the representatives of the Government of South Africa. It remains for the Commission to decide whether there is a need for a follow-up for studying the human rights situation until the final Constitution has been agreed upon in South Africa.

APPENDIX

Political parties that contested the election, geographical division of South Africa and composition of the new South African Government

The following political parties contested the elections:

1. African Christian Democratic Party (ACDP)
2. African Democratic Party (ADP) led by former Ciskei military rule Brigadier Oupa Gquozo
3. African Moderate Congress (AMC)
4. African Muslim Party (AMP)
5. African National Congress (ANC)
6. Democratic Party (DP)
7. Dikwankwetla Party
8. Federal party
9. Freedom Front (FF)
10. Inkatha Freedom Party (IFP)
11. Islamic Party
12. Keep it Straight and Simple Party
13. Luso - South Africa Party (LUSAP)
14. Minority Front (MF)
15. National Party (NP)
16. Northwest Democrats
17. Pan Africanist Congress (PAC)
18. Soccer Party
19. South African Communist Party (SACP)
20. South African Women's Party
21. Women's Rights for Peace Party

22. Workers List Party

23. Workers International to Rebuild the Fourth International Party

The following parties refrained from participating in the elections:

1. The Azanian People's Organization

2. The Black Consciousness Movement

3. Conservative Party (CP)

4. Afrikaner Volksfront (AV)

Only seven parties won seats in the 400-member National Assembly, distributed as follows in terms of the percentage poll each party received:

ANC	252
NP	82
IFP	43
FF	9
DP	7
PAC	5
ACDP	2

Geographical division of South Africa

South Africa is divided into nine provinces. The African National Congress won seven of the nine provinces. The National Party won the Western Cape. Inkatha Freedom Party won Kwazulu/Natal.

The provinces are:

1. Pretoria and Witwatersrand (PWV)

2. Kwazulu/Natal

3. Eastern Cape

4. Western Cape

5. Northern Cape

6. Eastern Transvaal

7. Northern Transvaal

8. North West

9. Orange Free State

THE NEW SOUTH AFRICAN GOVERNMENT

The following members of the Cabinet of South Africa were appointed on 12 July 1994:

President: Mr. Nelson Rolihlahla Mandela

First Deputy President: Thabo Mbeki

Second Deputy President: F. W. de Klerk

Minister of Agriculture: Kraai van Niekerk

Minister of Arts, Culture, Science and Technology: Ben Nguabane

Minister of Correctional Services: Sipho Mzimela

Minister of Defence: Joe Modise

Minister of Education: Sibusiso Bhengu

Minister of Environment Affairs: Dawie de Villiers

Minister of Finance: C. Liebenberg

Minister of Foreign Affairs: Alfred Nzo

Minister of Health: Nkozasana Diamini Zuma

Minister of Housing and Welfare: Joe Slovo

Minister of Justice: Dullah Omar

Minister of Labour: Tito Mboweni

Minister of Land Affairs: Derek Hanekom

Minister of Mineral and Energy Affairs: Roelof F. Botha

Minister of Post, Telecommunications and Broadcasting: Pallo Jordan

Minister of Provincial Affairs and Constitutional Development: Roelf Meyer

Minister of Public Enterprises: Stella Sigcau

Minister of Public Services and Administration: Zola Skweyiya

Minister of Public Works: Jeff Radebe

Minister of Safety and Security: Sydney Mufamadi

Minister of Sport: Steve Tshwete

Minister of Trade, Industry and Tourism: Trevor Manuel

Minister of Transport: Mac Maharaj

Minister of Water Affairs and Forestry: Kader Asmal

Minister of Welfare and Population Development: Abe Williams

Minister Without Portfolio: Jay Naidoo

Speaker of Parliament: Ms. Frene Ginwala

President of Senate: Mr. Kobie Coetsee

Chairman of Constituent Assembly: Mr. Cyril Ramaphosa